101th Congress
2d Session

COMMITTEE PRINT

S. PRT.
101-105

LEGAL ISSUES RELATING TO THE FUTURE STATUS OF GERMANY

PREPARED FOR THE

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

BY THE

CONGRESSIONAL RESEARCH SERVICE
LIBRARY OF CONGRESS

JUNE 1990

Printed for the use of the Committee on Foreign Relations

U.S. GOVERNMENT PRINTING OFFICE
31-149 ⇆ WASHINGTON : 1990

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S382-21

COMMITTEE ON FOREIGN RELATIONS

CLAIBORNE PELL, Rhode Island, *Chairman*

JOSEPH R. BIDEN, JR., Delaware
PAUL S. SARBANES, Maryland
ALAN CRANSTON, California
CHRISTOPHER J. DODD, Connecticut
JOHN F. KERRY, Massachusetts
PAUL SIMON, Illinois
TERRY SANFORD, North Carolina
DANIEL P. MOYNIHAN, New York
CHARLES S. ROBB, Virginia

JESSE HELMS, North Carolina
RICHARD G. LUGAR, Indiana
NANCY L. KASSEBAUM, Kansas
RUDY BOSCHWITZ, Minnesota
LARRY PRESSLER, South Dakota
FRANK H. MURKOWSKI, Alaska
MITCH McCONNELL, Kentucky
GORDON J. HUMPHREY, New Hampshire
CONNIE MACK, Florida

GERYLD B. CHRISTIANSON, *Staff Director*
JAMES P. LUCIER, *Minority Staff Director*

CONTENTS

	Page
PREFACE	v
German Reunification: United States Reserved or Retained Rights	1
The Stationing of Forces	5
Germany as a Whole	6
Berlin	6
The Unification of Germany: Background and Analysis of the Two-Plus-Four Talks	9
Evaluation of Germany's Role in Europe Since 1945	10
Immediate Post-War Objectives of the Allies	10
The Federal Republic in the Cold War	16
Two Plus Four: Origins and Process	22
Objectives of the Parties at Two-Plus-Four	25
Maps	38

PREFACE

As German reunification proceeds apace, and the United States engages in discussions with other nations about the future status of a reunified Germany in a post-cold war world, it seems to me that we should look to history to provide us with context for resolution of some of the outstanding issues. In particular, we should address the question of what the nature of the legal instrument should be which will reflect the final agreements and arrangements between and among the nations concerned.

In 1951, at President Truman's request, the Congress adopted a joint resolution which terminated the state of war between the United States and Germany. Pursuant to that resolution, President Truman signed a proclamation which similarly declared that the state of war was terminated and also stated that "it has been and continues to be the policy of the United States to bring about the conclusion of a treaty of peace with the government of a united and free Germany, but efforts to this end have been frustrated by the policy of the Soviet Government."

Some might insist that the foregoing statement of U.S. policy, and similar statements on the same subject over the years, should impel the U.S. Government toward concluding a formal "treaty of peace," with its attendant Constitutional requirement that the Senate provide its advice and consent to ratification. Others might envision a different form of "peace settlement," less legalistic and formal in style.

As a first step in examining this question, and at my request, specialists at the Congressional Research Service have provided me with two extremely thorough analyses relating to some of the issues involved. The first is a memorandum entitled "German Reunification: United States Reserved or Retained Rights," which analyzes a range of documents that relate specifically to U.S. legal rights and responsibilities in the whole of Germany and in Berlin, and which points out:

> Although the Executive Branch is assured a role by virtue of its monopoly over negotiations, the Senate and congressional roles are unclear at this time and must await the form and content of the eventual instrument or instruments associated with reunification.

The second analysis is a memorandum entitled "The Unification of Germany: Background and Analysis of the Two-Plus-Four Talks," which examines the manner in which political developments may have affected our reserved or retained rights and altered the legal framework established in 1945 by the four allied powers after Germany's unconditional surrender.

I think these two Congressional Research Service analyses provide a useful frame of reference and context for our consideration of legal issues relating to the future status of Germany, and for that reason I am having them printed for distribution to all members and to others who would join in a public dialog on these questions. I look forward to our making use of these fine, scholarly documents as valuable resource materials for our further study.

CLAIBORNE PELL, *Chairman*

GERMAN REUNIFICATION: UNITED STATES RESERVED OR RETAINED RIGHTS

(By Raymond J. Celada, Senior Specialist in American Public Law)

With German reunification no longer a speck on some distant horizon but a virtual foregone conclusion whether it takes place in 1990 or thereafter, various legal and political questions have come into focus. Among the former are United States rights and responsibilities implicated by German reunification and the respective roles of the political branches; these two matters; namely, reserved or retained rights and a United States role, are inseparable.[1] Although the Executive Branch is assured a role by virtue of its monopoly over negotiations, the Senate and congressional roles are unclear at this time and must await the form and content of the eventual instrument or instruments associated with reunification.[2]

Of course, it is somewhat artificial and misleading to discuss rights in this context as if they were the exclusive rights of the United States. The rights in question or, at least, some of them, while frequently and properly described as being contractual in nature, particularly as they relate to the stationing of troops in the Federal Republic of Germany, are nonetheless rights which derive from conquest and, as such, inhere in the Allies, the so called Big Four or Three Powers.[3] In the context of German reunification and

---

[1] The ongoing controversy regarding the use of the words unification or reunification to describe the merger of the Federal Republic of Germany and the German Democratic Republic is not a matter of concern here. The word reunification is relied on for present purposes because reunification was substituted for unification in one of the documents which forms the basis of discussion of United States reserved rights. See THE BONN AGREEMENTS OF 1952 as amended by THE PARIS PROTOCOL OF 1954, Senate Document No. 11, 84th Congress, 1st Session 3, 129 (1955). The change was made "at the request of the Germans, to signify that the union of the Federal Republic and Eastern Germany will be a restoration of a country which had already existed before the division." PROTOCOL ON THE TERMINATION OF THE OCCUPATION REGIME IN THE FEDERAL REPUBLIC OF GERMANY AND PROTOCOL TO THE NORTH ATLANTIC TREATY ON THE ACCESSION OF THE FEDERAL REPUBLIC OF GERMANY, Senate Executive Report No. 6, 84th Congress, 1st Session (1955) at page 18. *See Documents on Germany 1944-1985*, a publication of the Department of State.

[2] See *United States* v. *Curtiss-Wright Export Co.*, 299 U.S. 304, 319 (1936) ("He [the President] alone negotiates. Into the field of negotiations, the Senate cannot intrude; and Congress itself is powerless to invade it.") As will be noted later, the reservation of rights by the "occupying powers" was viewed as essential so that they could "participate in any negotiations which have the objective of reunifying Germany and concluding a peace treaty." Senate Executive Report No. 6, 84th Congress, 1st Session, at 12.

[3] Id. at 6; PROTOCOL ON THE TERMINATION OF THE OCCUPATION REGIME IN THE FEDERAL REPUBLIC OF GERMANY AND PROTOCOL TO THE NORTH ATLANTIC TREATY ON THE ACCESSION OF THE FEDERAL REPUBLIC OF GERMANY, Senate Executive Documents L and M, 83d Congress, 2d Session (1954) at page 7. "The agreements signed with Germany on May 26, 1952, are, it is true, not a 'treaty of peace' in the strict sense of the word. For the Germany which was defeated in 1945 is not now in a position to make a treaty, inasmuch as a substantial part of the state is occupied by the Soviet Union and not permitted to determine freely its political future. Only the Federal Republic of Germany, established at Bonn on September 21, 1949, is able to act; and it was believed by the occupying Powers, Great Brit-

Continued

a final peace settlement, whatever form they eventually take, the former or Big Four seems legally and politically appropriate notwithstanding the Cold War induced vicissitudes of the past four decades.[4]

Although not insubstantial when measured by traditional notions of full sovereignty, the rights of the Western Powers, including the United States, are a far cry from those they acquired in June 1945.[5] As the Cold War intensified and the likelihood of a final peace settlement was put off to the future,[6] the Western Powers began ceding to the German authorities, first in their several zones and later in their unified zone, culminating in the Federal Republic of Germany, more and more of the elements of sovereignty so that by 1955, the Convention on the Termination of the Occupation Regime in Germany was described as "restor[ing] sovereignty to the Federal Republic by permitting it to exercise full authority over its internal and external affairs, subject to the reservation of certain rights * * *" [7] Berlin's unique geographical and other circumstances prevented a similar relinquishment of rights by the Western Powers although their exercise is confined to certain areas.

What rights have been reserved by the Western Powers that are implicated by the reunification of Germany? In the words of Article 2 of the Western Powers Convention on Relations with the Federal Republic of Germany, "the Three powers retain the rights and responsibilities heretofore exercised or held by them, relating to Berlin, and to Germany as a whole, including the reunification of Germany and a peace settlement. The rights and responsibilities retained by the Three Powers relating to the stationing of armed

---

ain, France and the United States, that a formal treaty of peace could only be entered into with a unified Germany, and that pending the unification of Germany the partial treaty of peace should take the form of a series of 'contractual agreements,' the first and most important of which is the Convention on Relations with the Federal Republic of Germany, ratified by the United States on August 2nd last." C.G., Fenwick, "The Contractual Agreements with the Federal Republic of Germany," 46 *American Journal Of International Law* 701 (1962).

[4] See *Ludecke* v. *Watkins*, 335 U.S. 160 (1948) for a consideration of the power to conclude peace from a domestic, constitutional standpoint. This and other relevant cases are examined at length in the committee reports on the Joint Resolution to Terminate the State of War Between the United States and the Government of Germany, Public Law 181, 82d Congress, 2d Session. See, e.g., House Report No. 706, 82d Congress, 2d Session (1951).

[5] "* * * unconditional surrender to a conquering army, completely wipes out local sovereignty leaving the territory of the conquered nation, pending a treaty of peace, without any body of enforceable law save that which may be imposed by the conqueror." *Madsen* v. *Kinsella*, 93 F. Supp. 319, 323 (S.D. W.Va. 1950).

[6] With unconditional surrender the German state ceased to exist and responsibility for the Government of the German people was assumed by the four Allied powers. The military commanders of the Big Four who were in charge signed agreements which provided for their assumption of complete administrative control. Each commander took control of a separate occupation zone but the four were to act unanimously to ensure uniformity of action. Within 2 years joint control ended and the country was divided into two sections, one controlled by the Soviet Union and one by the United States, the United Kingdom, and France. The latter terminated their military government on September 21, 1949 and their zones became the Federal Republic of Germany.

[7] Senate Executive Report No. 6 at 1. A similar effort was undertaken several years earlier in connection with the Convention on Relations Between the Three Powers and the Federal Republic of Germany and the Protocol to the North Atlantic Treaty, the Bonn Agreements of 1952. CONVENTION ON RELATIONS WITH THE FEDERAL REPUBLIC OF GERMANY AND A PROTOCOL TO THE NORTH ATLANTIC TREATY, Senate Executive Report No. 16, 82d Congress, 2d Session 1 (1952). Neither of these instruments came into effect because the treaty to establish the European Defense Community, which was a prerequisite to the entry into force of the North Atlantic Protocol and of the Convention on Relations, was not ratified by all the parties. Note, however, that the 1954 Protocol on the Termination of the Occupation Regime was couched in terms of amendments to the ill fated 1952 Convention on Relations as approved by the Senate. Ibid.

forces in Germany and the protection of their security are dealt with in Articles 4 and 5 of the present Convention." [8]

The described rights, the residue of virtual, total sovereignty which inured to the Allies by virtue of the total capitulation of Germany, reflected the division of Germany. Retained by the Big Three, among other reasons, to enable them to deal with exigencies arising out of that division, they were to be held in reserve for those occasions, not for the purpose of ordinary affairs which the Convention on Relations and associated agreements turned over to the Federal Republic of Germany. In then Secretary of State Dean Acheson's words:

> * * * The effect of the conventions will be to advance as far as possible in the direction of normal relations with Germany by terminating the occupation of Western Germany and establishing the independence of the Federal Republic, subject only to certain powers, which will continue to be held by the United States, the United Kingdom, and France as they have been since the end of the war. The reason for keeping these powers is to enable the three Governments to deal with the issues arising from the continued division of Germany and the present state of international relations. The powers relate to the stationing and security of the Allied forces in Germany (including the right to proclaim a state of emergency in certain extreme circumstances and to take action thereunder), to Berlin, and to Germany as a whole (including questions of unification and a peace settlement). The powers are to be held in reserve for special use, and are not intended for exercise in ordinary German affairs, either domestic or foreign * * * [9]

Secretary Acheson's remarks regarding the reserved rights of the Three Powers are echoed in the report of the Senate Committee on Foreign Relations on the Bonn Agreements as follows:

> While the contractual agreements are designed to return control over West German internal and external affairs to the Federal Republic there are important respects in which the Three Powers reserve for themselves rights which they have possessed under the occupation. These reservations grow out of the current world situation and the impossibility of concluding a peace treaty. The first reservation relates to the stationing of armed forces in Germany by the Three and the protection of their security. This, of course, is necessitated by the danger of aggression

---

[8] Convention on Relations Between the Three Powers and the Federal Republic of Germany, May 26,1952, As Amended by Schedule I of the Protocol on Termination of the Occupation Regime in Germany, Signed at Paris, October 23, 1954, 6 UST 4121.

[9] CONVENTION ON RELATIONS WITH THE FEDERAL REPUBLIC OF GERMANY AND A PROTOCOL TO THE NORTH ATLANTIC TREATY, Senate Executive Documents Q and R, 82d Congress, 2d Session (1952) at pages 5 and 6. While these remarks were directed at the ill fated Bonn Agreements of 1952, they are relevant and probative of the 1954 arrangements since the changes between the two sets of agreements were "minor and merely serve to bring the 1952 convention up to date." Senate Executive Report No. 6, at 6. The emergency authority claimed by the Allies and referred to above was relinquished in 1968. See Article Xa State of Defence, THE BASIC LAW OF THE FEDERAL REPUBLIC OF GERMANY [the Constitution of West Germany]. Secretary Acheson's comments were repeated by his successor, John Foster Dulles, in 1954 when effective reconsideration of the Bonn Agreements became necessary because of their association with the treaty to establish the European Defense Community which did not go into effect. Senate Executive Documents L and M at 7-8.

against Germany coupled with the lack of a German defense force. To withdraw security forces from Germany now would be to issue an open invitation to the Communist armies in Eastern Europe to move in and place all of Germany behind the iron curtain.

The second reserved power relates to Berlin. Berlin at the present time is not a part of the Federal Germany, but is administered by the allied occupying forces. At one time there was a German administration of all Berlin; but that was split by the Soviet authorities so that the German Government now operates in the western part under the supervision of the Kommandatura, that is the three commandants—British, French, and American, while the eastern part is governed by the Soviets.

The third reservation applies to Germany as a whole, including unification of Germany and a peace settlement. Since Soviet obstructionism continues to stand in the way of a treaty of peace and since Germany still remains divided as a result of the inability of the Three Powers and the Soviet Union to agree upon unification this reservation is self-explanatory.

It should be noted that the terms of the convention on relations places obligations on each party to preserve the reserved rights. Collaterally it prevents the Federal Republic from undertaking any action that is likely to prejudice these rights and directs the Federal Republic to cooperate with the Three Powers in order to facilitate their exercise.[10]

As indicated, Article 2 and, with respect to the stationing of forces, Articles 4 and 5 of the Convention on Relations between the Three powers and the Federal Republic of Germany speak of rights "retain[ed]" by the former as falling into three areas: "rights * * * heretofore exercised or held by them, relating to Berlin and to Germany as a whole, including the reunification of Germany and a peace settlement * * * [and] relating to the stationing of the armed forces in Germany and their protection and their security * * *" Also, as indicated, the various documentary materials associated with the convention or its doomed predecessor all agree that the retention of these rights was the intended purpose and effect of these articles. They were deemed necessary in order to enable the Three Powers to confront emergencies and "to participate in any negotiations which have the objective of reunifying Germany and concluding a peace treaty." [11] However, neither the Convention on Relations nor the materials connected with it exhaustively enumerate the rights comprehended by the agreement. Clearly, while reserving the rights in question, some of them were to be found in other documents which were familiar to government officials at the

---

[10] Senate Executive Report No. 16, at 19–20. See Senate Executive Report No. 6, 84th Congress, 1st Session (1955) at 9–10, for a reiteration of the same views.

[11] Senate Executive Report No. 6 at 12. The effect of either reunification or a peace settlement would materially alter the legal relationships between the Federal Republic and the occupying powers and would jeopardize the legal standing of the Three Powers to participate in these and other settlements.

time, domestic and foreign and executive and legislative officials. Note, for example, that Article 2 describes the rights being retained as those "heretofore exercised or held by" the Three Powers.

The Stationing of Forces

The right to station forces in the Federal Republic was expressly reserved but the nature of the right underwent a significant change in the Convention on Relations and allied agreements. What previously had been imposed on Western Germany in the exercise of a right of conquest became the subject of mutual agreement reflecting the end of occupation and the emergence of the Federal Republic of Germany to "the full authority of a sovereign state over its internal and external affairs." [12] As described in an analysis prepared by the Department of State at the time, "The effect of these provisions is not to abolish the right of the Three Powers to station forces in the Republic, but to change its exercise from a purely unilateral prerogative to a matter of mutual understanding between them and the German Government. The convention ensures that Allied forces will remain in the Federal Republic on terms suitable between equal members of a great military alliance." [13]

The Convention was accompanied by three executive agreements which implemented the right in this new context. One agreement regulated the status of the forces and their dependents in Germany with provisions for their general rights and obligations, jurisdiction in civil and criminal proceedings, extradition, customs treatment, health and sanitation, the movements of troops in Germany, communications, and logistics requirements of the forces.[14] Another provided for German financial support of Allied forces in Germany and for the settlement of financial questions arising from the stationing of forces in Germany, including management of support funds, compensation for damages, and related other matters.[15] The remaining agreement concerning the stationing of foreign troops in Western Germany generally exempted members of the armed forces and dependents from German taxes.[16]

Article 8 of the Convention on Relations specifically referred to these three agreements and generally regarded them as marking a transitional phase until entry into force of the Agreement on the Status of Forces in the Federal Republic of Germany.[17] The stationing of forces and related matters previously covered in the three described agreements are now undertaken pursuant to the Status of Forces Agreement.

Germany as a Whole

With one or two possible additions, the rights comprehended by this expression are largely defined by Article 2 of the Convention

---

[12] Id. at 6.
[13] Id. at 12.
[14] THE CONVENTION ON THE RIGHTS AND OBLIGATIONS OF FOREIGN FORCES AND THEIR MEMBERS IN THE FEDERAL REPUBLIC OF GERMANY, 6 UST 4278 (1955).
[15] THE FINANCE CONVENTION, 6 UST 4377 (1955).
[16] THE CONVENTION ON THE TAX TREATMENT OF FORCES AND THEIR MEMBERS, 6 UST 4370 (1955).
[17] 14 UST 531 (1963).

on Relations which makes it clear that it includes participation in the negotiations on "reunification of Germany and a peace settlement." As previously noted, "this reservation was deemed essential" so that the latter ['the occupying powers'] can participate in any negotiations which have the objective of reunifying Germany and concluding a peace treaty." [18] Since either reunification or the conclusion of a peace settlement would alter the legal relationships of the parties, agreement by them retaining the status quo in this regard was considered as being essential by the Three Powers.

The use of the word "including" in Article 2 suggests the existence of one or more other "rights * * * heretofore exercised or held by them, relating * * * to Germany as a whole * * *" One such right would likely include boundary settlements affecting Germany and Berlin. This right was declared by the Big Four upon assuming supreme authority over Germany on June 4, 1945, and seems unaffected by formal termination of the state of war between the United States and Germany or other developments such as the termination of occupation and restoration of the Federal Republic of Germany to virtual full sovereignty.[19]

In the Settlement Convention, another agreement in the package of agreements signed in 1954 and referred to in Article 8 of the Convention on Relations, the parties agreed that the "Three Powers will continue to regulate all air traffic to and from Berlin * * * [and] to exercise control with respect to aircraft of the Union of Soviet Socialist Republics utilizing the air space of the Federal Republic." [20] Subsequent developments do not appear to have adversely affected this provision in any particular.

Berlin

Not surprisingly, the inability of the Big Four to carry out wartime and post-war agreements relating to joint administration of Germany was repeated with respect to Berlin. Joint administration by the Allied Kommandatura, made up of military commanders of the Allies, was frustrated when the Soviet commander left on July 1, 1948. Since that time the Three Powers have exercised their authority through the Allied Kommandatura only in the three western sectors of Berlin.

---

[18] Senate Executive Report No. 6, 84th Congress, 1st Session at 12.

[19] Declaration Regarding the Defeat of Germany and the Assumption of Supreme Authority by the Allied Powers, Signed at Berlin, June 5, 1945: "* * * The Governments of the United States of America, the Union of Soviet Socialist Republics and the United Kingdom, and the Provisional Government of the French Republic, will hereafter determine the boundaries of Germany or any part thereof and the status of Germany or of any area at present being part of German territory. See Statement by the Foreign Ministers of France, the United Kingdom, and the United States Reaffirming Four Power Responsibility for Germany and Berlin. September 28, 1955. See, e.g., House Report No. 706, 82d Congress, 2d Session at 8 stating that the resolution ending the state of war "does not contain any reservation of the rights of the United States except those existing under the Trading With the Enemy Act, as amended * * * This does not mean that the United States is forfeiting any rights. On the contrary, the resolution reserves all the rights it is believed need to be expressed explicitly. The reason it is not considered necessary to catalog the reservation of rights is that the position of the United States as an occupying power in Germany does not rest on the existence of a state of war and, except where mentioned in the resolution, these rights continue and are not affected by the termination of the state of war."

[20] CONVENTION ON THE SETTLEMENT OF MATTERS ARISING OUT OF THE WAR AND OCCUPATION, MAY 26, 1952, AS AMENDED BY SCHEDULE IV OF THE PROTOCOL ON TERMINATION OF THE OCCUPATION REGIME IN GERMANY MANY SIGNED AT PARIS, OCTOBER 23, 1954.

The now familiar pattern of the western Allies permitting local government under a locally adopted constitution was followed in Berlin. There was one significant difference, however; West Berlin remains legally occupied by the Three Powers. In other words, notwithstanding the turnover of "full legislative and executive and judicial powers" to Greater Berlin by the Allied Kommandatura, the Allies have supreme authority over Berlin.[21] Efforts by West German authorities, East German authorities, and Soviets to undertake activities or to take steps that would adversely affect the Western Allies' status have been challenged and checked by the latter.[22]

Despite their supreme authority over West Berlin, the Three Powers "normally [confine its] exercise" to security, interests, and immunities of the Allied Forces, including their representatives, dependents and non German employees; disarmament and demilitarization; relations of Berlin with authorities abroad; satisfaction of occupation costs; and authority over the Berlin police to the extent necessary to ensure the security of Berlin.[23]

The remaining area of demonstrated Three Power concern for rights relates to access to and freedom of movement in Berlin. Considered implicit in their right to be in Berlin, the Three Powers have asserted them time and again, beginning in 1948 at the time of the Soviet blockade of Berlin. Air access to Berlin is authorized by the decision of the Big Four military commanders of November 30, 1945 that approved the establishment of three air corridors between what was then the British and United States occupation zone [24] Some months earlier, on June 29, 1945, the Big Four agreed on surface access to Berlin by way of road and rail.[25] Persons presumably familiar with these matters state that, controversy notwithstanding, these access points have been in use throughout the years.

Soviet and other assertions over the years that certain developments have altered the legal landscape to the detriment of Three Powers' legal ties with Berlin, have been rejected, including most recently the notion that the Quadripartite Agreement on Berlin of September 3, 1971, may have worked some such change. Undertaken "to promote the elimination of tension and the prevention of complications in" Berlin, Part I, 4 states that "The four Govern-

---

[21] See Statements of Principles Governing the Relations Between the Allied Kommandatura and Greater Berlin, Signed by the Three Western Commandants, Berlin, May 14, 1949, the Letter From the Allied (Western) Kommandatura to the West Berlin Authorities Approving, With Reservation, the West Berlin Constitution, August 29, 1950, and the Declaration on Berlin Governing Relations Between the Allied (Western) Kommandatura and Berlin, Issued by the Three Western Commandants, May 26, 1952, which entered into force on May 5, 1955.

[22] See, e.g., Letter From the Military Governors of the Three Western Zones of Occupation to the President of the West German Parliamentary Council Approving with Reservations, the Basic Law for the Federal Republic of Germany, May 12, 1949, Letter from the Allied High Commissioners to Chancellor Adenauer on Relations, Between the Federal Republic of Germany and Berlin, May 26, 1952, As Amended October 23, 1954, and Statement Setting Forth the Legal Right of the United States to Access to and Presence in Ber'in, Issued by the Department of State, December 20, 1958.

[23] Paragraph III, Declaration on Berlin Governing Relations Between the Allied (Western) Kommandatura and Berlin, Issued by the Three Western Commandants, May 26, 1952, which entered into force on May 5, 1955.

[24] Decision of the Control Council Approving Establishment of Berlin-Hamburg, Berlin-Buckeburg (Hannover), and Berlin-Frankfurt-am-Main Air Corridors, November 30, 1945.

[25] Notes of a Conference Among Marshal Zhukov, General Clay, and General Weeks on Surface and air access to Berlin, June 29, 1945.

ments agree that, irrespective of the differences in legal views, the situation which has developed in the area, and as it is defined in this Agreement as well as in the other agreements referred to in this Agreement, shall not be changed unilaterally." [26]

[26] See, e.g., 1975 Digest of United States Practice in International Law 328 et seq.

THE UNIFICATION OF GERMANY: BACKGROUND AND ANALYSIS OF THE TWO-PLUS-FOUR TALKS

(By Paul E. Gallis, Specialist in West European Affairs, Foreign Affairs and National Defense Division)

INTRODUCTION

The Two-plus-Four process now in its beginning stages will likely alter radically the longstanding competitive security relationships between East and West in Europe, and the influence that the United States and the Soviet Union have wielded on the continent.

In February 1990, the four powers from World War II—the United States, the Soviet Union, France, and Great Britain—exercising rights over the whole of Germany and Berlin agreed to the unification of the Federal Republic of Germany (FRG) and the German Democratic Republic (GDR). While the two Germanys are deciding upon the process of unification, the four powers will meet with representatives of the two states to address resolution of issues remaining from the War and its immediate aftermath.

The objectives of the Federal Republic of Germany at Two-plus-Four are to achieve unification and regain full sovereignty in order to pursue its political and economic life in Europe reasonably free of the dominating influence of the East-West competition that has controlled its existence since the War. The positions of the other nations at the talks are more fluid and continue to develop. A range of factors is influencing these positions: political instability in the Soviet Union; pursuit by many nations of more rapid progress at the talks on Conventional Armed Forces in Europe (CFE); a general desire in European NATO countries to reduce short-range nuclear forces (SNF); concern over the need both for the sanctity of borders and for open borders in Europe; and the search for a new European framework that provides stability in political, economic, and security matters. There is some concern over the prospect of an economically and politically dominant Germany in Central Europe. The participants of the Two-plus-Four talks are actively pursuing courses intended either to turn some of these developments to their advantage, or to deflect their influence on the discussions.

This report provides an analysis of the manner in which political developments have affected U.S. legal rights and responsibilities in Germany, and should be read in tandem with the accompanying memorandum, "German Reunification: United States Reserved and Retained Rights."

The first section of this report addresses primarily the manner in which international political developments and the growing strength of democracy in the Federal Republic after its foundation

in 1949 have enhanced the FRG's standing and steadily increased its influence in the Atlantic Alliance. The themes and developments selected are intended to be illustrative and not comprehensive.

The second section analyzes more recent developments, with the purpose of elucidating the interests and the evolving objectives of the participants in the Two-plus-Four talks.

In addition to a review of the documentary record of the four power relationship, the author of this report conducted a series of interviews in March and April 1990 with officials of several governments and with nongovernment specialists.

Evaluaton of Germany's Role in Europe Since 1945

The War and the settlement that followed have greatly affected political developments in Germany from 1945 to the present, and are factors for consideration in analyzing the possible course of the Two-plus-Four talks. The allies' requirement of unconditional surrender and Potsdam's division of Germany into four sectors left the German nation largely at the mercy of the competing alliance systems that began to take shape shortly after the Second World War ended.

Today the tribulations brought by the Nazi era and the aftermath of the War have led the generation of Germans borr before and during the conflict to seek stability and predictability in political and economic affairs. This characteristic of German political life is an important factor in weighing possible outcomes of the current talks on Germany's future. In 1945, Germany's principal cities, particularly in the northern half of the country, lay shattered by allied bombing attacks and by the land campaigns that followed them. Severe shortages of food and shelter and a virtually valueless currency recalled for many Germans the harsh conditions that prevailed for much of the decade after the First World War. Unlike the settlement that followed World War I, in 1945 the allies imposed an occupation regime. The eventual hardening of boundaries between the Soviet sectors and the three Western allied sectors left many families and economic entities in Germany physically divided. For Germans, implementation of the occupation regime left no doubt over who had lost the War.

Immediate Post-War Objectives of the Allies

At Potsdam (July-August 1945), the allies sought to assure that Germany would never regain the capacity to develop an economy and society able to make war. German industries producing war materiel were to be destroyed or altered, and "primary emphasis" was to be given "to the development of agriculture and peaceful domestic industries." Education was to be controlled in order to eliminate completely "Nazi and militarist doctrines." Laws of racial and ethnic discrimination were to be abolished, and war criminals were to be brought to judgment. A principal objective of the occupation regime was "to convince the German people that they have suffered a total military defeat and that they cannot escape responsibility for what they have brought upon themselves, since their own ruthless warfare and the fanatical Nazi resistance

have destroyed [the] German economy and made chaos and suffering inevitable." [1] The allies agreed that Germany must assume responsibility for the severe loss of life and property by paying reparations. In addition Germany was required to cede territory to several of the nations invaded by the Third Reich.

Simultaneously, the Potsdam signatories declared that they should reconstruct "German political life on a democratic basis" and prepare the country "for eventual peaceful cooperation in international life * * *" [2] The division of Germany into zones controlled by the allies was regarded by the Western powers as a temporary measure, and the economic unity of Germany was still assumed.

In the course of efforts to achieve these two objectives—ending Germany's capacity for war, and building a new state with democratic principles—the allies became divided and these divisions would prove instrumental in shaping important issues now confronted at the Two-plus-Four talks.

Borders

The Yalta and Potsdam conferences did not yield a final resolution of all border questions raised by the Second World War. At Yalta (February 1945), as the War was approaching its end, U.S., Soviet, and British representatives agreed on a general division of territory in Eastern Europe. The Soviet Union declared its intention to annex the regions of East Prussia and Polesie and parts of the regions of Volhynia and Galicia (all east of the "Curzon Line" established in 1919 at Versailles), each of which had been part of German territory before the Second World War, and an area long disputed by German, Russian, and Polish governments. At Yalta, the allies also agreed that the Oder-Neisse rivers would be the temporary western boundary of Poland.

At Potsdam, the allies sought to conclude a more lasting settlement of issues raised by the War. Representatives of France were not present at Potsdam, but the French government was later brought into the various administrative structures erected to manage the vestigial German state. Because no peace treaty was signed and because Potsdam set the stage for Germany's eventual division into two states, most border questions concerning German territory have never been finally resolved.

The Oder-Neisse line.—Above all, the German-Polish border became a matter of contention between the three Western allies and the Soviet Union. At Potsdam, the United States, the Soviet Union, and Great Britain agreed that "the final delimitation of the western frontier of Poland should await the peace settlement." They further agreed that "former German territories" east of the Oder-Neisse rivers (see maps) "shall be under the administration of

---

[1] Protocol of the Proceedings of the Berlin (Potsdam) Conference. August 1, 1945. Documents on Germany. Washington: Dept. of State, 1985. p. 56–58.

[2] Ibid., p. 56. There are many studies of the immediate postwar settlement. See, for example, Gimbel, John. The American Army of Occupation (Stanford University Press, 1968); and Peterson, Edward N. The American Occupation of Germany: Retreat to Victory (Detroit: Wayne State University Press, 1977); and U.S. Congress. House Committee on Foreign Affairs. Subcommittee on Europe and the Middle East. The German Question Forty Years after Yalta, by Stanley R. Sloan. Prepared by the Congressional Research Service. Washington, 1985.

the Polish state," and that the opinion of the Polish provisional government created in 1945 would be sought in a final determination of the border. Poland was to receive some territory, as yet unspecified, as compensation for the part of eastern Poland occupied, then annexed, by the Soviet Union at the end of the War. In an evident effort to solve the ethnic minority problems that had in part served as a pretext for Hitler's aggressive territorial policy, the three powers also sanctioned "the transfer to Germany of German populations, or elements thereof, remaining in Poland, Czechoslovakia and Hungary * * * in an orderly and humane manner." [3]

The three Western powers were soon in disagreement with the Soviet Union over the drawing of the Polish-German border. The three Western powers have never given formal legal sanction to the Oder-Neisse line. In April 1947, as U.S.-Soviet relations were deteriorating and the territorial division of Germany was hardening, Secretary of State George C. Marshall summarized his concerns over the border issue:

> "The United States Government recognized the commitment made at Yalta to give fair compensation to Poland in the west for territory east of the Curzon Line incorporated into the Soviet Union. But the perpetuation of the present temporary [Oder-Neisse] line between Germany and Poland would deprive Germany of territory which before the war provided more than a fifth of the foodstuffs on which the German population depended. It is clear that in any event Germany will be obliged to support, with such restricted boundaries, not only her prewar population but a considerable number of Germans from Eastern Europe. To a certain extent this situation is unavoidable, but we must not agree to its aggravation. We do not want Poland to be left with less resources than she had before the war. She is entitled to more, but it will not help Poland to give her frontiers that will probably create difficulties for her in the future * * * We must look forward to a future where a democratic Poland and a democratic Germany will be good neighbors." [4]

In Marshall's view, the Oder-Neisse line and the transfer of populations imposed added hardships on the German economy and were issues, unless resolved, that would provoke German grievances in the future.[5]

---

[3] The Potsdam Conference. Foreign Relations of the United States (FRUS), 1945, vol. II. Washington: U.S. Govt. Print. Off., 1960. p. 1509, 1511. The Polish government expelled large elements of the German population in the territory east of the Oder-Neisse given to it for administration, even though this territory was not recognized by the Western allies as part of Poland.

[4] Report by Secretary of State Marshall on the Fourth Session of the Council of Foreign Ministers. Documents on Germany. April 28, 1947. p. 120–121. The underlining is in the original. Approximately eight million persons of German ethnic background moved in the immediate post-war years from regions in Eastern Europe into divided Germany.

[5] In 1950, East Germany, in the Zgorzelec (Gorlitz) Agreement, affirmed with Poland that the Oder-Neisse line was "an inviolable frontier." Agreement between Poland and the German Democratic Republic on demarcation of the Polish-German frontier. July 6, 1950. Documents on Germany. p. 319–321. East Germany was under the tight control of the Soviet Union at this time. Succeeding East German governments through early 1990 have reaffirmed this agreement. The East German parliament brought to power by the democratic elections of March 18, 1990, confirmed the Oder-Neisse line as its eastern boundary on April 12, 1990.

Eupen-Malmedy.—The failure of the allies to agree upon a peace settlement has left other border questions in limbo, at least in the view of one government. At the Versailles Conference in 1919, as part of the settlement of the First World War, the districts of Eupen, Malmedy, and Moresnet, lying on the Belgian-German frontier, were awarded to Belgium (see maps). In 1940, after the German invasion of Belgium, Germany annexed these territories. Belgium never recognized this annexation. Citing the Versailles settlement, Belgium reclaimed and again governed the districts after the Second World War. In March 1990, the Belgian government raised the possibility that it might seek a treaty with the new, unified Germany to sanction the border agreed at Versailles. As of April 1990 no similar issue has been raised by other nations conquered by Germany during the War.

Reparations

The Potsdam Conference outlined the means for Germany's payment for damages to property and for loss of life in the War, but the allies never fully resolved a clear-cut method either to measure reparations or to determine a point at which they should end. The United States sought to derive reparations from existing capital equipment and to proceed at a pace that would allow Germany to rebuild an economy sufficient to feed its people, including the millions of ethnic German refugees streaming into the country from Soviet-occupied Europe. The Soviet Union contended that the allies should take reparations from "current production"—goods and capital generated by German industry and agriculture—as well as from capital equipment. In the view of the U.S. government, taking reparations from current production might indefinitely postpone the recovery of the German economy. Agreement on the source of reparations became an important issue for Congress and the Truman Administration, because both hoped to avoid saddling the U.S. taxpayer with the cost of feeding and sheltering the German population.

The Soviets carried away large, but undetermined, amounts of capital equipment—such as rolling stock, machinery for producing ball bearings, machinery for generating electricity, and in some instances the entire contents of factories. Potsdam allowed the Soviets to take assets able to contribute to a warmaking capacity from their sector, as well 25 percent of the military industrial capacity taken as reparations by the Western powers from their zones. Such an arrangement added to the economic burden borne by the three Western sectors. Moreover, the allies had agreed that the four zones would comprise a single economic entity as part of an effort to make Germany self-sustaining, but the Soviets prevented any commerce between their zone and those of the Western allies. Poland was given the right to take reparations from capital equipment in the territory that it administered east of the Oder-Neisse line.

The United States, Great Britain, and France, like the Soviet Union, also dismantled German industrial capacity in their zones as reparations payments. In addition, France was given provisional control of the Saar in order to derive reparations from the region's industrial capacity. By late 1946 the German economy in all four

zones was at a standstill, and large amounts of food and other supplies from the United States, Great Britain, and France were necessary to prevent widespread deprivation of the German population in the Western zones.

Truman administration officials and many members of Congress expressed concern at the financial cost to the United States of these developments. In addition, some U.S. observers at the time believed that the German population increasingly viewed reparations not as compensation for allied losses but as an act of vengeance [6]—an impediment to building a democratic nation that ultimately might be expected to accept defeat and the settlement of the War as just. A senior U.S. occupation official testified before Congress in December 1947 that reparations in the Soviet zone had exceeded what the victorious powers had contemplated because the Soviets were removing equipment from "peaceful industries" necessary for Germany's economic survival.[7]

Broader considerations began to shape U.S. policy towards reparations by 1947, and these considerations led to the underpinnings of western Germany's gradually growing political and economic importance to U.S. foreign policy goals. U.S. officials grew concerned over the slow recovery of the economies of all of Western Europe. In April 1947 Secretary of State Marshall urged a slowing of the dismantlement of the industrial capacity of Germany. After a meeting of the four powers, the Western allies recognized "the fact that a too drastic reduction in Germany's industrial set-up will not only make it difficult for Germany to become self-supporting but will retard the economic recovery of Europe." Western allies believed that increased production of German coal was necessary to this end. The Soviet representatives declined to take a position on this issue.[8] In December 1947 the U.S. House of Representatives passed resolutions noting the heavy financial cost of U.S. assistance to Germany that the reparation regime was exacting, and recommended reparations be suspended because they were impeding the recovery of Western Europe.[9]

An aggressive Soviet foreign policy spurred the Western allies' resolve to construct a united effort to counter growing Soviet power in Europe. The Soviets imposed restrictions not only on commerce but also on the movement of individuals into and out of their zone. The inability of the three Western allies and the Soviet Union to reach agreement on a viable single currency for Germany, Soviet destabilization and control of nations in Eastern Europe, and the Berlin blockade in 1948 hardened the political as well as the boundary lines separating the U.S., French, and British zones from the Soviet zones.

---

[6] See, for example, U.S. Congress. House Committee on International Relations. Hearings. Problems of World War II and its Aftermath. vol. II. Washington: U.S. Govt. Print. Off., 1976), p. 570. The allies were well aware that Hitler had emphasized what he believed the draconian aspects of the Versailles Treaty in order to build domestic support for the return of Germany to a dominant role in European affairs.

[7] Testimony of Col. Lawrence Wilkinson (Director of the Economics Division of the military government in Berlin), op. cit., p. 514.

[8] Report by Marshall on the fourth session of the Council, op. cit., p. 120.

[9] U.S. Congress. Problems of World War II. House Res. 365, Inquiry on Dismantling and Removal of Plants in Germany. Appendix I. p. 549.

The suspension of the reparations regime and a greater measure of German self-government were the initial means by which the Western allies sought to provide greater economic and political stability in the Western zones. The United States sharply decreased the reparations that it was taking from Germany by the end of 1947. The Federal Republic of Germany was created in 1949 from the three Western zones and began to grow steadily in importance as an ally. On February 27, 1953, the United States, France, Great Britain, and several other Western nations signed with the Federal Republic the London Agreement on German External Debts. The London Agreement committed the FRG to pay pre-war (including World War I) and wartime debts, but postponed further consideration of reparations payments until the conclusion of a peace settlement ending the War. In 1953 the Soviet Union recognized the German Democratic Republic (GDR) as a sovereign nation and the following year waived all reparations claims against that state. In 1963 Poland waived further claims to reparations from the GDR and the FRG.[10]

Reparations for Israel.—The Federal Republic of Germany and Israel signed a reparations agreement on September 10, 1952. The Federal Republic agreed that Germany as a whole should pay $822 million to Israel, with the FRG paying two-thirds and the German Democratic Republic paying one-third of that amount. The FRG completed its payments in May 1966.[11] The German Democratic Republic did not sign the agreement and has never paid reparations to Israel.

Claims and Compensation

While reparations are payments made to nations, compensation and claims are restitution made to individuals for loss of property, loss of the lives of relatives, or personal pain or injury. The Federal Republic has paid compensation and claims to Jews and to other religious and ethnic groups who suffered losses during the War. In several agreements, the Federal Republic has accepted Germany's responsibility for crimes committed against Holocaust survivors by Hitler's government. Approximately $43 billion has been paid as claims and compensation since the 1950's. These payments continue today. The Conference on Jewish Material Claims against Germany processes claims against Germany, and has worked closely with the Federal Republic in the adjudication of such claims. The United States government informally assists in this process by providing information, where possible, about relevant individuals and property.

Restitution owed to individuals by the GDR remains an issue. The GDR refused to admit responsibility for crimes committed in Germany during the Holocaust until February 1990, when it

---

[10] New war reparations claims await a united Germany, Nordwest Zeitung, reprinted in German Tribune. Hamburg, March 11, 1990. p. 5; Peace Treaty could pave the way for a fresh spate of reparations claims, Saarbrucker Zeitung, in German Tribune. March 18, 1990. p. 3; and Communique announcing Soviet economic relief for the German Democratic Republic and the exchange of ambassadors, Aug. 22, 1953, in Documents on Germany. p. 406–408; for a discussion of the World War I debt issue, see Library of Congress. Congressional Research Service. Foreign Indebtedness to the United States from World War I, by Vladimir N. Pregelj. March 12, 1965. Washington.

[11] See Inge Deutschkron, Bonn and Jerusalem. Philadelphia: Chilton Book Co., 1970. p. 28–32.

pledged to provide compensation to legitimate claimants. On April 12, 1990, the GDR parliament, the *Volkskammer,* acknowledged East German responsibility for Nazi crimes, and promised "to provide just compensation for material losses." [12]

The Federal Republic in the Cold War

In the late 1940's the three Western allies began to contemplate development of a German state in their sectors in an effort to create a viable political entity capable of contributing to a security apparatus against the Soviet Union. In 1947 and 1948, the United States established the Marshall Plan in order to provide economic assistance to stabilize governments throughout Europe for the purpose of providing a stronger front against Soviet influence. Such assistance was also offered to Germany. In April 1949, under U.S. leadership, Western leaders created the NATO Alliance. The zones under the control of the Western allies were not invited to join NATO.

The Division of Germany

In 1948 and 1949 the Western allies made repeated attempts to reach agreement with the Soviet Union on measures to unify the German state. The Soviets rebuffed these efforts, maintained large armed forces in their zone, and remained determined not only to prevent any possible rise of a fully sovereign German state but to establish in eastern Germany a defensive line against the West. The United States, Great Britain, and France, having failed in their efforts to establish a unified Germany, directed German officials in the three western zones to draft legal documents that would serve as the basis for a state comprising the Western zones. A German Parliamentary Council was constituted, and it drafted a Basic Law—submitted first to the Western allies for revision and approval—that created the Federal Republic of Germany on May 5, 1949. The three powers, however, preserved the occupation regime, and forbade the creation of a ministry of foreign affairs or armed forces by the new government.

The establishment of the Federal Republic has created an anomaly among states. The leaders of the FRG, duly elected in fully democratic elections, struggled in the state's early years to gain greater control from the Western allies over its internal and external affairs. Its leaders have also taken the view that their state is a temporary entity, one day to be replaced by a state created by the unification of the four zones created at Potsdam and the incorporation of Berlin.

The Basic Law committed the Federal Republic "to achieve in free self-determination the unity and freedom of Germany," a phrase that held the possibility of ultimate unification through free elections in eastern Germany. The Parliamentary Council stated that it had acted in the name of Germans living in the Soviet zone

---

[12] Schwerin, Kurt. German compensation for victims of Nazi persecution. Northwestern University Law Review. vol. 67. September-October, 1972; East Germany agrees to pay reparations to the Jewish victims of the Nazis. New York Times. Feb. 9, 1990. p. 7; E. Germans admit role in Holocaust. Washington Post. Feb. 9, 1990. p. A24; and New East German Legislature Asks Forgiveness for Holocaust. Washington Post, Apr. 13, 1990. p. A1.

as well as those in the newly constituted state. Both the Federal Republic and the Western allies continue to hold the view that the whole German state was neither annexed nor abolished at Yalta or Potsdam, or by any succeeding conventions or agreements. According to the Federal Republic, Germany "continued to exist, although under the responsibility of the four powers. The legal status of Germany as a whole has never been altered and exists up to the present time." [13] Berlin is not a part of the Federal Republic, and has remained a city under four-power control since the end of the War.

In May 1949, under the supervision of the Soviet Union, the constitution of the German Democratic Republic was promulgated in response to the establishment of the Federal Republic. The Soviets sought to give greater political and legal definition to the division of Germany by creating a separate state under their control. The Federal Republic did not recognize the German Democratic Republic as a fully sovereign state, arguing among other things that free elections had never been held there.

Growing Importance of the Federal Republic to the West

Konrad Adenauer, the Federal Republic's first Chancellor and leader of the Christian Democratic Union (CDU), strove to build democratic institutions in the new German state and to align his government firmly with the West. An increasingly aggressive Soviet foreign policy in the late 1940's and the 1950's led Western officials slowly to grant greater freedom to the Federal Republic to determine its own political course and to contribute to the economic and political strength of the West. For example, in 1950 the United States quietly explored formation of an army by the Federal Republic. Adenauer rebuffed this effort. He was reportedly reluctant to restore military strength in Germany due to his people's continuing effort to grasp their responsibilities for the Nazi era, and to his apprehension over Soviet reaction to any rearmament measures.[14] The Social Democratic Party (SPD) also opposed any program of remilitarization.

The United States and its NATO allies undertook concrete measures in the 1950's to increase their economic cooperation and political coordination with the Federal Republic. Such cooperation of necessity included giving added trust and independence of action to the Federal Republic, as the allies sought to build political support in West Germany for a stronger Western security system. In 1950 the three Western powers permitted the Federal Republic to establish a ministry of foreign affairs and to increase steel production "where this will facilitate the defense effort of the West." [15] The creation of the European Coal and Steel Community (ECSC) harnessed West German industry and resources to the effort to build

---

[13] Relations between the Two States in Germany. German Information Center. August 1987. p. 1, 2.

[14] May, Ernest R. The American commitment to Germany, 1949–55. Diplomatic History. Fall 1989. p. 443–448. In 1949 the Soviets developed their first atomic bomb. The war in Korea also heightened Western concerns over expansionist communist regimes. May argues that the U.S. Chiefs of Staff led the effort to urge creation of a German army in 1950.

[15] Communique by the western foreign ministers outlining steps for liberalization of relations with the Federal Republic of Germany. Documents on Germany. Sept. 16, 1950. p. 342–343.

Western Europe's economy. It also contributed to the Federal Republic's economic revival.

The NATO allies made several decisions in the early and mid-1950's intended to bring the FRG's growing economic power and viability as a working democracy to bear in a growing Western security framework. In 1952, the three Western allies controlling the occupation regime issued the Tripartite Declaration, establishing "a new relationship" with the Federal Republic. Citing the Bonn Convention and other agreements, they stated that this relationship provided "a new basis for uniting Europe and for the realization of Germany's partnership in the European community * * * They make possible the removal of special restraints hitherto imposed on the Federal Republic * * * and permit its participation as an equal partner in Western defense." [16] The Western allies invited the FRG to join NATO in 1954. The occupation regime was terminated in 1955, Bonn was allowed to raise an army, and on May 5, 1955, the Federal Republic formally became a member of NATO. These important steps in the security field removed the principal formal restrictions on the FRG's sovereignty.[17] At the same time, in a series of additional agreements, the Bonn government agreed to forswear the production of nuclear, biological, and chemical (ABC) weapons. The Federal Republic's membership in 1957 in the European Community completed a range of steps intended to integrate the Federal Republic fully into Western political, economic, and security relationships.

Ostpolitik: The Federal Republic Seeks an End to a Divided Europe

The division of Germany reflected the division of Europe. On May 14, 1955, shortly after the FRG joined NATO, the Soviet Union created the Warsaw Pact, of which the German Democratic Republic became a member. For the next decade the division of Germany and the division of Europe hardened. The construction of the Berlin Wall in 1961, the Berlin crisis of 1962, the Soviet military build-up in Eastern Europe and the strengthening of the GDR "people's police" and the GDR army were expressions of the growing tensions in Europe and between the United States and the Soviet Union. Both NATO and the Warsaw Pact considered Germany as the core of the alliance system due to its strategic position and to the political and ideological struggle of East and West played out on its territory.

In a legal sense, the Federal Republic enjoyed full sovereignty. It held free elections from its creation in 1949; it was invited to join NATO and raise an army; and it became a powerful economic and political force in the European Community by the 1960's. But in a

---

[16] Tripartite Declaration providing security assurances to Western Europe, Germany, and Berlin. Ibid. p. 384-385.

[17] See, for example, the Final Act of the Nine-Power Conference, London, Oct. 3, 1954. Documents on Germany. p. 419-424. The three Western powers (joined by other NATO nations in other parts of the agreement) stated their intention "to associate the Federal Republic of Germany on a footing of equality with their efforts for peace and security * * *" In the Bonn Convention, which entered into force on the day the FRG joined NATO, the three powers and the FRG agreed that "the Federal Republic shall have accordingly the full authority of a sovereign state over its internal and external affairs." The Bonn Convention. Ibid. p. 425. In all of these agreements from the late 1940's through the 1970's, the Western powers at the same time explicitly retained their "legal rights and responsibilities" to the determination of the future of "Germany as a whole" and Berlin.

political sense, some West Germans believe that the postwar agreements left the FRG without a clear, sovereign identity, and that these agreements have fettered it with limitations that suggest residual allied distrust. No West German government has ever contested the prohibition on Bonn's right to produce ABC weapons, and public opinion in the FRG has consistently opposed any suggestion of altering this prohibition. However, the U.S. right to store and utilize chemical and nuclear weapons on FRG territory had become a controversial issue by the 1960's, in part due to environmental concerns, in part to the clear indication that such a right gave life and death authority over Germans to another nation in the event of war, and in part perhaps because such an alienated right ran counter to the psychological need of a democratic people to manage their security more fully. NATO maneuvers and low-level flights left West Germans in no doubt that they lived in the core of a potential East-West battle zone. The division of East and West appeared to promise to many Germans the indefinite division of their own country.

In the mid-1960's West German political figures of the major parties undertook initiatives to improve relations with the Soviet Union and its East European allies in an effort to increase the FRG's management of its security. Kurt-Georg Kiesinger, the CDU Chancellor of a coalition government with the Social Democratic Party (SPD), raised the possibility of discussions with the GDR in order to improve relations between the two German states. The FRG established diplomatic relations with several East European nations during this period.

Under the leadership of SPD Chancellor Willy Brandt (1968–74), the Federal Republic sought more concrete steps that would both lower tensions in Central Europe and improve relations between the two Germanys. The Brandt government signed a series of "eastern treaties" to this end. Beyond promoting trade, the treaties provided a political pledge of the integrity of postwar borders as they existed in 1945. In a 1970 treaty with the Soviet Union, the Federal Republic agreed "without reservation to respect the territorial integrity of all states in Europe in their present boundaries * * * [The FRG and the Soviet Union] declare that they have no territorial claims against anyone and will not raise such claims in the future * * * including the Oder-Neisse line * * *" [18]

The Brandt government sought, and signed, a similar agreement with Poland. In the Warsaw Treaty of 1970, the FRG and Poland affirmed the "inviolability * * * now and in the future" of "the existing boundary line [of the Oder-Neisse as Poland's western boundary] the course of which is laid down" [in the Potsdam agreement]. Though the treaty pledges the signatories to the "inviolability" of the Polish-German border, an interpretation of the entire agreement could be construed to mean that the border issue could one day be revisited. Article IV of the Warsaw Treaty states that the agreement "shall not affect any bilateral or multilateral international agreements previously concluded by either contracting Party

[18] Treaty between the Federal Republic of Germany and the Soviet Union, Aug. 12, 1970. Documents on Germany. p. 1104.

or concerning them." [19] Because the Potsdam Conference postponed determination of border questions raised by the War until a final peace settlement, the Potsdam agreement would arguably be within the purview of Article IV. Nonetheless, the FRG's political commitment to the inviolability of the Oder-Neisse was underscored by the treaty.

One U.S. specialist on politics and public opinion in Germany believes that the younger generation of West Germans had come to accept the Oder-Neisse line by the 1960's as part of the price that Germany must pay for the War. Brandt's *Ostpolitik* was controversial, but he remained a popular figure in both West and East Germany.[20] The general direction of his policy has been pursued by the two succeeding governments of the Federal Republic.

Some officials in NATO governments, including the U.S. government, have expressed the concern for two decades that *Ostpolitika* might lead to a second Rapallo, a reference to the 1922 agreement between the Soviet Union and Germany in which the two signatories sought to improve bilateral relations, ostensibly at the cost of the security of other nations that feared any Soviet-German rapprochement. Publicly, for two decades U.S. officials have supported closer Soviet-FRG ties, though privately many of these officials have expressed concern that Bonn might accept neutrality—and therefore the dissolution of the core of NATO—as the price for unification.

Helsinki and Detente

In the early 1970's the U.S. government began to pursue policies aimed at improving East-West relations. West German *Ostpolitika* undoubtedly influenced these policies. A series of steps—the Four Power Berlin Agreement that improved access throughout that city, initiation of NATO-Warsaw Pact force reduction talks (Mutual and Balanced Force Reduction talks, or MBFR), and increased East-West trade—were political measures that contributed to detente.

Beginning in the 1960's, the Soviet Union proposed that a European security conference be convened. Soviet objectives were to reduce tensions, expand economic cooperation with the West, and reach agreements that affirmed postwar boundaries and Soviet predominance in Eastern Europe. The West rebuffed a number of such initiatives, but by 1972 agreed to a Conference on Security and Cooperation in Europe (CSCE) that would address, as the Soviets desired, territorial integrity and East-West trade and security, but also human rights and the freer movement of peoples.

The Helsinki Final Act of 1975, concluding the CSCE negotiations, expressed many of the objectives of detente. The Final Act is a political document, and not a treaty. It therefore does not have the force of law. The thirty-five signatories, which included all the NATO and Warsaw Pact nations, agreed that all borders were "inviolable," but that borders could "be changed, in accordance with

---

[19] Treaty between the Federal Republic of Germany and Poland concerning the basis for normalizing their mutual relations. Dec. 7, 1970: Documents on Germany. p. 1126.

[20] Interview with Stephen F. Szabo, March 27, 1990. Szabo is the associate dean of the faculty at the National Defense University in Washington, D.C.

international law, by peaceful means, and by agreement." The signatories further agreed that they would "refrain from any demand for, or act of, seizure and usurpation of part or all of the territory of any participating state." [21]

Helsinki thereby gave strong U.S. political support to the borders as they were left at Potsdam. Some critics of Helsinki have contended that the agreement gave a Western imprimatur to the division of Germany and to the Soviet order in Eastern Europe. The U.S. and other Western governments, including the Federal Republic, however, hold the view that though Helsinki recognized the political status quo in Europe, it left open the possibility of peaceful border changes through the principle of self-determination. For many Germans, the principle of self-determination meant that one day a freely elected government in East Germany might choose unification with the Federal Republic. For the four Potsdam powers, Helsinki did not take the place of a final peace settlement of the Second World War. The U.S. Government has consistently held the view that, because Helsinki was a political and not a legal document, it did not provide a final answer to the border issues—including the Oder-Neisse line—raised by the War.

Bonn's Growing Assertiveness in Political and Security Fields

The Federal Republic has increased its importance to the Atlantic Alliance since the late 1970's, both in terms of concrete decisions by Bonn that have affected NATO security, and in terms of the political influence exerted by the FRG on other members of the NATO alliance. The FRG has the largest conventional army in Western Europe and has been at the forefront in contributing to principal Alliance decisions in the political and security fields. These decisions have been taken during a period of growing support within the West German electorate for progress at East-West conventional and nuclear forces talks. For example, despite widespread public opposition to the basing of intermediate nuclear force (INF) systems in some West European countries, including the Federal Republic, the government of SPD Chancellor Helmut Schmidt decided to accept the U.S.-controlled INF systems in the FRG in order to strengthen NATO deterrence and to foster INF arms control talks with the U.S.S.R.

The changing political climate in Western Europe in the 1980's has found articulate expression in the politics of the Federal Republic. The collapse of detente after the Soviet invasion of Afghanistan found concrete effect not only in the termination of the SALT talks and the continued stagnation of the MBFR discussions, but in the INF basing decision. These developments occurred against the backdrop of a growing antinuclear movement in Europe, of which elements of the SPD and the newly founded Greens movement in the FRG have played an influential role. Throughout the 1980's the SPD, especially after its fall from power in 1982, has had a small but influential wing in favor of the elimination of nuclear weapons

---

[21] The Helsinki Final Act. Conference on Security and Cooperation in Europe, 1975. p. 1. For a discussion of CSCE, see U.S. Library of Congress. Congressional Research Service. Conference on Security and Cooperation in Europe: After the Vienna Meeting. Issue Brief No. 87220, by Francis T. Miko (regularly updated). Washington, 1987.

from Germany and eventual departure of the Federal Republic from NATO. Though the viewpoint of this element of the SPD has never had majority support in the FRG, the West German population strongly supported the INF Treaty of 1987 and reductions in short-range nuclear forces (SNF) in Europe, the greatest number of which are based on German soil (East and West).

In 1989 the government of CDU Chancellor Helmut Kohl strongly challenged the U.S. government on several security issues. In the wake of Soviet leader Mikhail Gorbachev's reform movement, Bonn successfully led West European allies in May 1989 in pressing the Bush Administration to postpone a decision on modernization of NATO's SNF until 1992. In November 1989 Foreign Minister Hans-Dietrich Genscher took a position that SNF modernization must be canceled, given that such weapons would fall on "democratizing" nations such as Poland and Hungary. The weakening or collapse of all the communist governments of Eastern Europe in the fall of 1989 increased the weight of these views in West European eyes.

Similarly, in October 1989 Bonn strongly challenged the U.S. position at COCOM (Coordinating Committee on Multilateral Export Controls) that tight restrictions on Western sale of technologies to Warsaw Pact countries must be maintained to restrain the Pact's military strength. The Kohl government, backed by most other European COCOM members, has contended that the sale to the East of selected advanced technologies, able to spur economic growth, is necessary if reformist regimes are to survive. In response, the U.S. government in February and March 1990 agreed to consider shortening the COCOM list of technologies restricted for sale to several East European countries, and to revise the list for sale to the Soviet Union, though in a more limited manner, as well.[22]

TWO PLUS FOUR: ORIGINS AND PROCESS

The United States, Great Britain, France, and the Federal Republic agreed at Ottawa on February 12, 1990, that the two Germanys should first decide upon the process of unification, then the four powers from the Second World War would discuss with German representatives the new state's external relations with the rest of Europe. The Soviet Union has given its assent to this "Two-plus-Four" formula.

The Two-plus-Four process will take place against the backdrop of declining Soviet power in Europe. The collapse of the Warsaw Pact as a militarily effective alliance and instability in the Soviet Union have not only diminished Soviet influence in Europe, but made possible in Germany, the rest of Western Europe, and the United States consideration of a new security framework that may lower the level of armaments and tension in Central Europe. This new security framework, should it be the product of continued improvement in U.S.-Soviet relations, could also mean the diminution

---

[22] Cocom pressures Bush on technology exports. Washington Post. April 11, 1990. p. A16; Les membres du COCOM accelerent Ia liberalisation des echanges technologiques avec l'Est. Le Monde. Feb. 18–19, 1990. p. 13; U.S. accepts softening of high-tech export ban. International Herald Tribune. March 29, 1990. p. 1.

of NATO's role as the principal institution of Western security, and thereby a diminution of the U.S. presence and influence in Europe.

The collapse of the GDR government in the fall of 1989 and the democratic elections in the GDR on March 18, 1990, produced a new East German leadership uncertain of any mandate except the pursuit of unification.[23]

The crises in the GDR and the Soviet Union have placed the Federal Republic at a crossroads: the founding of the FRG, its development as a democracy, and its robust economic growth have occurred within the framework of such Western institutions as NATO and the European Community, but its future course as defined by its leaders now requires reorientation towards a leading, and not secondary, role in Europe as a whole. As direct Soviet power recedes in Eastern Europe and the possibility of a diminished U.S. political and military role in Europe grows, the Federal Republic's responsibility for assuring the continent's economic growth and political stability will likely expand.

The Two-Plus-Four Process

The four powers exercising rights and responsibilities over "Germany as a whole" and Berlin gave their consent during late 1989 and early 1990 to the unification of the Federal Republic and the German Democratic Republic. In the view of most officials interviewed for this report, the four powers retain the right to approve or reject elements of the unification settlement that concern internal questions of the two German states. However, the Federal Republic's economic and political strength, and concern among the four powers over creating a nationalistic backlash within Germany against them, have led the four powers to take the position that their opposition to solutions chosen by the Germans concerning purely internal issues is unlikely. Officials of the four powers, including the Soviet Union, have also expressed the view that the strength of the democratic process in the Federal Republic means that resolution of such internal issues should be a matter for Germans alone. FRG officials have stated that they would oppose any effort by the four powers to guide the unification process.

The overwhelming economic and political strength of the Federal Republic in comparison to the fledgling and divided government in the GDR created by the March 1990 elections has resulted in Bonn's direction of the unification process. The GDR's serious need for economic assistance and the general perception of the elections as a call for rapid unification has so far left the GDR leadership with little more than a consultative role in the process of unification. With the formation of a broad coalition government on April 12, 1990, however, the GDR's role at Two-plus-Four could increase.

The initial meeting of the Two-plus-Four parties occurred on March 14, 1990, at the ambassadorial level. The representatives addressed primarily procedural questions. All parties agreed that representatives of Poland should be invited to participate when the issue of Poland's western border with Germany is raised, and when

---

[23] See U.S. Library of Congress. Congressional Research Service. Germany's future and U.S. interests. Issue Brief No. 90006, by Paul E. Gallis and Steven J. Woehrel (regularly updated). Washington 1990.

other issues affecting Polish security—such as placement or size of troop configurations in eastern Germany—are discussed. FRG Chancellor Helmut Kohl had opposed Polish participation at Two-plus-Four for several weeks before the initial meeting. A U.S. official familiar with the course of the meeting stated that Soviet representatives were "cooperative" as the parties threaded their way through a lengthy agenda.

Elements of the Unification Process

The March elections fulfilled a longstanding prerequisite of the Federal Republic and the three Western powers that a democratically elected government in the east was necessary before unification could occur. The FRG and the three powers also hold the view that unification itself must come through self-determination. Article 23 of the Basic Law lists the *Laender* (states) of West Germany, then notes that "in other parts of Germany [the Basic Law] shall be put into force on their accession." [24] Officials of the Federal Republic and of the United States agree that the most likely route to reunification will be that the GDR government will recreate *Laender* on its territory, which will then utilize Article 23 to join the Federal Republic. Some FRG officials believe that this process will require several years to complete.[25]

During the course of this process of political and legal unification, the two German states will undertake steps intended to mold the social and economic lives of the FRG and the GDR. The negotiations between the two states on these matters began in a concerted manner shortly after the March elections. According to press reports, Bonn is seeking to persuade GDR officials to alter existing laws on monetary, economic, and social policies and bring them in line with those in the Federal Republic as a means to ease the transition from a socialist system to the mixed economy of the FRG.

Bonn has proposed the implementation of monetary union by July 1, 1990. The rate of exchange as of mid-April has not been decided, but the range under discussion is from 1:1 to 3:1 (Ostmarks:Deutschemarks). Bonn has reportedly further proposed that the GDR revoke all provisions of its constitution that apply to a planned economy and accept the financial policy driven in the FRG by the *Bundesbank*.[26] The Federal Republic has also suggested alterations in existing GDR laws governing the ownership and sale of private property, and right of foreign nationals to acquire property or do business in the GDR.

Bonn is urging the GDR to alter its laws to reflect guidelines required by EC laws and directives because the ultimate completion of the unification process will place the GDR within the European Community. Should the GDR comply, it will have to curb agricul-

---

[24] Article 23. The Basic Law. Bonn: Press and Information Office of the Federal Republic of Germany, 1987. p. 24. There is a precedent for this process. On Dec. 23, 1956, the Saarland joined the Federal Republic through Article 23.

[25] See, for example, Interior Minister interviewed on unity, SPD. FBIS:WEU. March 27, 1990. p. 13-14; and Genscher interviewed on unification, NATO. FBIS:WEU. March 12, 1990. p. 4.

[26] For a discussion of the possible effects of monetary union, see U.S. Library of Congress. Congressional Research Service. The Monetary unification of Germany: some implications, by Gail Makinen. CRS Report 90-137 E. March 12, 1990.

tural and industrial subsidies, begin the process or raising standards in factories and of products, and institute a range of environmental legislation. EC Commissioner Martin Bangemann, a senior official in the Free Democratic Party (FDP) of the Federal Republic, believes that absorption of the GDR by the FRG under Article 23 will also mean that Bonn must assume East Germany's debts and contractual obligations to other countries, including the Soviet Union.[27]

OBJECTIVES OF THE PARTIES AT TWO-PLUS-FOUR

The United States

U.S. officials emphasize that their positions on a number of issues to be addressed at Two-plus-Four are evolving. Nonetheless, general objectives of the United States are clear.

The United States is seeking a settlement at Two-plus-Four that contributes to "stability and security" in Europe, in the words of one official. The outline of such a settlement would entail a return to a unified Germany of the "legal rights and responsibilities" of the four powers over Germany and in Berlin; a "legal document" that addresses the Polish-German border; and agreement to address broad East-West arms control issues outside the Two plus-Four process.

Berlin.—One U.S. official readily conceded that "reality doesn't always correspond fully with the written record" with regard to U.S. rights and responsibilities in Germany and Berlin. The growing strength of the Federal Republic has eroded, in practice, some of these rights and responsibilities. He noted that little U.S. authority in Berlin is exercised unilaterally, but in consultation with Berlin officials and officials of the Federal Republic. Nonetheless, the United States has been careful in the written record to underscore its continued rights in the city in a range of agreements since the War. In practice, the United States has also occasionally exercised its rights in circumstances of potentially great political sensitivity. In 1986, for example, in the wake of a terrorist bombing of a West Berlin discotheque that killed an American serviceman, the United States and the other two Western allies ordered West Berlin police to identify and search thousands of people crossing the border between East and West Berlin.

One U.S. official believes that the United States might decide at Two-plus-Four upon an early, explicit renunciation of its rights and responsibilities. He believes that this is the course that the Federal Republic would like Washington to follow. The Bush Administration wishes to keep U.S. forces in Berlin as long as the city is surrounded by Soviet forces. The United States and the Federal Republic have reportedly discussed an arrangement by which Washington would renounce its troop stationing rights in Berlin, then negotiate a bilateral agreement leaving U.S. forces in place following a Two-plus-Four settlement until Soviet forces leave eastern Germany. Another U.S. official suggested a phased reduction of

[27] For a more extended discussion of these proposals, see Bonn draft of treaty on economic union. FBIS wire copy. April 6, 1990. p. 1-2; Draft state treaty details. FBIS wire copy. April 4, 1990. p. 1; Interior Minister interviewed. op. cit. p. 13-14. For an EC perspective, see 'Fast track' plea on E. Germany. Financial Times. March 22, 1990. p. 2.

U.S. forces from Berlin in the event that the Soviets withdraw all but small contingents of the Soviet army to positions near the Polish border.

U.S. officials agreed that the Federal Republic would likely oppose a U.S. course that seeks to renounce some rights but retain others until Soviet forces have left Germany. They believe that the United States should seek arrangements with Germany in which U.S. rights are renounced, but that practical implementation of certain measures—such as a phased regime of turning the inter-German air corridor over to German officials—may be necessary to provide an orderly transition.

Reparations and claims.—The United States believes that reparations from World War II are no longer an issue on the agenda between Bonn and Washington. The London Agreement of 1953 left the issue of reparations in abeyance until a final peace settlement. However, many U.S. officials believe that the generations of Germans born after the War should not be saddled with questions that imply their guilt for the policies of Nazi Germany. One observer noted that West Germans desire only to be viewed as "normal Europeans who have earned their place in modern Europe," on a footing of equality with peoples of other nations. Any aspect of an agreement that "singularizes" Germans for different treatment will be resisted by German officials, in his view.[28] Reparations, because they were imposed as payment for damages caused by the War, are unacceptable both to the West German government and to the overwhelming majority of Germans today. One observer noted that as a practical matter, it would border on a "surreal act" today to ask Germany to turn over capital equipment from its industries beyond that seized four decades ago.

The GDR expropriated property, valued at $78 million, belonging to U.S. nationals after the War. These claims have never been paid. Some observers believe that, upon unification, U.S. citizens could pursue these claims with the new German government.

Borders.—Border issues pose more difficult questions for the U.S. Government. The U.S. Government has strongly supported Poland's participation at Two-plus-Four as part of the effort to achieve stability in Europe. Most U.S. officials believe that there must be a treaty between the new Germany and Poland that permanently fixes the Oder-Neisse line as the border. They also believe that German officials will seek such a treaty.

The general question of all borders affected by the War raises more difficult issues, and the United States has not adopted a firm position on how to treat this subject. Should the Belgian-FRG border, which the Federal Republic has recognized places Eupen-Malmedy in Belgian territory, be reaffirmed by the new Germany, since Germans living in the GDR have never formally agreed to its current status? With the FRG absorbing the GDR and creating a new state, should similar, new documents be negotiated to apply to other borders, such as the Austro-German or the Czech-German border? Some U.S. officials believe that such legal agreements could contribute to the reassurance of Germany's neighbors and

[28] Interview with Stephen Szabo. March 27, 1990.

provide a stable political framework for Europeans of the future. However, these same officials expressed concern that rounds of bilateral or multilateral negotiations over treaty level documents addressing borders would again "singularize" the German people. On the other hand, few officials believe that a non-binding CSCE document similar to the Helsinki Final Act would prove adequate to supply the desired long-term stability.

NATO and arms control.—The United States will seek at Two-plus-Four to keep the new Germany in NATO, and within the integrated command structure. The United States contends that security and arms control questions should continue to be addressed in existing arms control forums. U.S. officials, in evident accord with the FRG, believe that questions of troop reductions of West German forces should be addressed in the multilateral East-West framework at CFE, in the second round, and are not a proper subject for discussion at Two-plus-Four. U.S. officials also believe that the positioning of U.S. nuclear weapons in West Germany is both a NATO matter and a U.S.-FRG bilateral matter. Any negotiations on SNF must await a CFE 1 settlement. Washington reportedly will resist any Soviet efforts to conclude a Two-plus-Four agreement that addresses this question.

A peace settlement.—Finally, U.S. officials believe that a "peace settlement" and not a treaty must be the goal of Two-plus-Four. One official believes that a general legal document below the treaty level, such as a convention, might be appropriate to provide a firm and lasting basis for the Two-plus-Four settlement. Bilateral treaties, such as a border agreement between Poland and Germany, may in some instances also prove fruitful, in the view of most U.S. observers interviewed. The concern of these officials, however, appears to be that the Germans are very impatient for a resolution of Two-plus-Four issues, and that all parties represented, as well as the whole of Europe, need time to digest the issues to be addressed in order to achieve a settlement that is viable. This concern apparently lies behind their belief that CSCE may not be able to provide binding agreements that satisfy all interested parties.

The Federal Republic of Germany

West German officials view as their central objective the rapid termination of allied rights and responsibilities in Germany and Berlin. In addressing other issues, Two-plus-Four must be a "consultative and not a decision-making process," though representatives of the Federal Republic believe that the Soviet Union and Poland do not share this view, and will pursue negotiating postures intended to result in binding decisions for the six participants.

A strong desire to see the Federal Republic treated as one modern European state among many was evident in interviews with FRG officials. They vigorously defended and reiterated the view that Two-plus-Four must set the stage for Europeans and the United States to look to Europe's future, and not treat issues of the Second World War and its immediate aftermath as if they were the issues of today. Any implication that Germans who had not reached an age of political maturity by the War's end are responsible for Hitler's crimes would be unacceptable to the Federal Republic.

Another general objective of the Federal Republic is to achieve a settlement at Two-plus-Four that reassures the Soviets that the NATO allies seek progress in arms control, improved economic and political relations, and stability in Europe. Two-plus-Four should be the beginning of a process that outlines the direction of a new security framework for the continent. In the view of the Federal Republic, the results of Two-plus-Four should be discussed and endorsed at the CSCE meeting in November 1990.

Borders.—FRG officials agree that the border issue will be an important topic of discussion at Two-plus-Four. They believe that the main border question concerns the Polish-German frontier, and that this issue is already near resolution. They cited with approval the *Bundestag* resolution of March 8, 1990, as an important first step in this process, and supported the GDR parliament adopting the same resolution.[29] Some West German officials sharply criticized Chancellor Kohl's statements in late 1989 and early 1990 that implied less than full commitment to the inviolability of the Polish-German border. One official also noted that Helsinki is not a legally binding document, and that the Federal Republic is willing to agree "to a binding treaty with Poland and an all-German parliament" that recognizes the permanence of the Oder-Neisse line.

This official stated that Germany would not agree to guarantees by other nations of a Polish-German border treaty. Guarantees would recall the pre-War era, an era in which attention and guilt were focused upon Germany. He made this point in the context of a discussion that the German people must be treated as modern Europeans, and that the political perspectives of the Hitler era must not be perpetually imputed as those of current day Germans.

Reparations and claims.—This same official said that the Federal Republic would oppose any reopening of the reparations issue. He noted that Germany had had over forty enemies in the War, and that heavy reparations had already been paid to the four powers and to Poland. Another German official expressed chagrin that Yugoslavia has asked Germany for discussions on reparations. He noted ruefully that Romania had also approached the Federal Republic and had stated that it wishes to open the reparations issue.[30] One German official believes that because reparations are tied so closely to the issue of war guilt, revisiting the issue "would open an enormous wave of nationalism and bad feeling" in Germany, which could serve no one's interests.

German officials, both in the executive departments of the Federal Republic and in the Bundestag, appear divided over the question of restitution that may be sought by private individuals in other states due to losses incurred in the War. Some observers believe that Germany may agree to discuss such matters on a bilateral basis, as restitution was not a subject addressed at Potsdam and in other three-power and four-power agreements.

---

[29] The resolution reads: "The Polish people can feel reassured that we Germans will neither now or in the future call their right to live within secure borders into question by raising territorial claims."

[30] Romania was an ally of Germany in the Second World War. Hitler's retreating forces in 1944 carried away valuables from private individuals and took rolling stock and other capital equipment as well.

Security issues and Berlin.—A principal matter of concern to all German officials interviewed for this study was the future of Soviet forces in the GDR and in Berlin, and the related question of the new Germany's position in a European security framework. Some FRG officials believe that the victory of the CDU in the GDR elections strengthens Bonn's contention that a united Germany should remain in NATO, which is the position of the CDU-FDP coalition in Bonn. They opposed a repeated Soviet suggestion, ultimately abandoned by Moscow in April 1990, that a united Germany should be neutral. More broadly, they supported a gradual process in which Germany maintained its membership in NATO, CSCE increasingly assumed responsibility for addressing security concerns of all Europeans, and existing arms control forums such as CFE continued on their current course.

One official contended that Germany must remain bound to NATO, and not be "free-floating. We instill anxieties due to our size in our neighbors. We want to be bound in the Alliance. But we want the Alliance to be more political." He said that Germany had already agreed to give up portions of its economic sovereignty through membership in the European Community, and would continue to pursue greater economic and political integration there. In his view, such a policy should reassure nations that feared Germany would use its economic strength to achieve nationalistic ends.

The Federal Republic does not oppose a general discussion of the size of the *Bundeswehr* at Two-plus-Four, but the Soviets must accept that any final decision lies with Germany and should be made in a multilateral framework. In such a position once again is evident the Federal Republic's opposition to being "singularized" as a nation that must be dealt with differently than others. FRG officials believe that the Soviet Union will eventually adopt the position that reductions of Soviet and German forces must be agreed in the CFE forum, and not Two-plus-Four. In this process, a CFE 1 agreement, expected by some U.S. observers in the summer of 1990, would reduce Soviet and U.S. troops in the central region to 195,000. The Soviets now have approximately 380,000 troops in the GDR, and the strength of the *Bundeswehr* is 495,000.[31] In the second stage of the CFE process, troop levels for other CSCE members including the Federal Republic, are expected to be addressed.

The Federal Republic has stated that NATO forces (including FRG forces assigned to NATO) will not be stationed on the territory of the GDR once Soviet forces withdraw from Germany. One FRG official envisions a transitional period in which "indigenous forces"—presumably elements of the GDR army or police, or perhaps FRG territorial forces not under NATO command—are stationed on GDR territory during the period that Soviet forces are being reduced. "But for the long run, we can not accept [such a Western or German troop configuration], as it would give the Soviets a say in Alliance matters." He would not be more explicit as to the possible size or nature—NATO or non-NATO German forces—

[31] For a full discussion of CFE, see U.S. Library of Congress. Congressional Research Service. Conventional Arms Control in Europe: Prospects for Accord, by Stanley R. Sloan. Issue Brief 86064 (continually updated). Washington 1986.

that might comprise future contingents in GDR territory, but stated that this too could be discussed.

The issue of Soviet forces in the GDR is closely tied to Berlin. Most FRG officials wish to move the capital of a united Germany to Berlin. One official stated that Berlin could not become the capital until Soviet forces are sharply reduced. "We can not have a Ministry of Defense surrounded by hostile forces," he continued. He believes that within 5 to 7 years Berlin may once again become the capital. He further stated that the manner in which four power rights would be dissolved in Berlin could not be addressed with clarity until the positions of the parties at Two-plus-Four were expressed at the table. Some West Germans have argued that while Berlin could become Germany's ceremonial capitol, Bonn should be the governmental center.

FRG officials, in the context of discussions over armed forces, consistently reiterated a united Germany's intention to underscore the FRG's longstanding commitment not to produce ABC weapons.

A peace settlement.—Finally, FRG officials will support a general "peace settlement" of the issues remaining from the War, and will oppose a peace treaty. One official stated that a peace treaty is "politically inappropriate" after 45 years. As a practical matter, negotiation of such a treaty with the Third Reich's large number of enemies would be an "enormous international procedure" that would address reparations and other politically sensitive issues that would create a backlash in Germany. Moreover, necessary consideration of such a treaty by the U.S. Senate would be mirrored by the Supreme Soviet exercising its right to debate ratification. In political terms, such a development would likely re-open German-Soviet wounds from the War. Such a development might also put Gorbachev on the defensive, should he have to defend the treaty before his parliament. "We must have a result [of Two-plus-Four] that Gorbachev can sell as a political success." The best means for achieving this end is to address the results of Two-plus-Four at a CSCE summit in November, he concluded.

The German Democratic Republic

Most observers believe that the GDR leadership, virtually unknown in both the GDR and the FRG until recent months, will have minimal influence at the Two-plus-Four talks. Their electoral mandate was to achieve unification, and little more. CDU leaders in the GDR struggled for 3 weeks before forming a coalition government on April 12, 1990. The country's economic needs have dominated its discussions with Bonn officials. Its new leadership has not clearly addressed Two-plus-Four issues. The government, because it is a coalition of the major parties, however, may eventually seek more than a marginal role in the discussions.[32] One GDR official, usually well informed on Soviet views on European affairs, complained that since the March elections in East Germany Soviet officials had been unwilling to engage in substantive discussions

[32] According to one press report, the GDR coalition government will support a united Germany's membership in NATO, but will insist that the Alliance pledge no first use of nuclear weapons. See East German parties agree on coalition. Washington Post. April 10, 1990. p. A16.

with him, and were instead concentrating their efforts on talks with the Federal Republic.

The Soviet Union

Soviet officials interviewed for this report stressed that their government is exploring a range of options for the Two-plus-Four talks, and that beyond several general objectives, their positions remain in a state of formation.

One Soviet official described his government's general objective as achieving "the unification of a German nation, [while] at the same time [maintaining] stability within the existing framework of political and economic relations * * *" Soviet officials repeatedly urged that Western governments recognize that the Soviet Union began a new course in 1985 under *perestroyka,* that the era of Stalinism that had preserved an atmosphere and policy of confrontation with the West was past, and that Moscow wished to encourage the course of democratic expression in Germany that was leading to unification.

At the same time, Soviet officials stated that the Western participants of Two-plus-Four must recognize that the talks are in fact addressing the manner in which Soviet power in Europe will be reduced and the strategic advantage of the West will geographically move into Eastern Europe due to collapse of the Warsaw Pact as a militarily effective alliance, and to the democratic governments that are emerging. These officials contended that the Soviet Union will develop positions at Two-plus-Four that provide for an orderly transition into this new era, and will seek firm and binding agreements at Two-plus-Four that assure Soviet security interests. Soviet officials did not propose abandonment of CFE discussions, but they did contend that troop levels in Germany must be addressed at Two-plus-Four.

Soviet soundings of the Federal Republic.—Since February 1990, Soviet officials have approached Bonn in an effort to discuss a range of options of significance to future German-Soviet relations and to Western interests in Central Europe. These proposals, pieced together from several sources, have been treated by the Soviet Union as exploratory:

1. The *Bundeswehr* should reduce from 495,000 to 200,000. At the same time, over a period of 3 to 5 years, Soviet forces in eastern Germany would reduce to a low level, from a current figure of 380,000 to a level between 20,000 and 50,000. U.S. forces in western Germany might remain at an unequal and higher level than Soviet forces in the east. Ultimately, the Soviets seek to honor Gorbachev's commitment to the withdrawal of all Soviet troops from foreign soil.

2. The Federal Republic should alter its status in the European security framework, in order that it is no longer positioned as the strategic and geographic crux of the NATO alliance. Several options are possible: the FRG might leave NATO's integrated military command and remain a member of NATO's political structure, or might remain in NATO and become a member of the Warsaw Pact as well. Germany should not be a neutral country but should engage its future in European institutions.

3. A united Germany must assume the debts owed by the GDR to COMECOM countries, including the Soviet Union. The COMECOM list should be shortened so that the Soviet Union might obtain from Germany the technologies it has in the past obtained from the GDR, as well as more sophisticated technologies essential to modernization of the Soviet economy.

The Soviets believe that the outline of such an agreement should be a result of Two-plus-Four, where the nations represented would pledge adoption of such a settlement. The process and timetable of force reductions might proceed at CFE and ultimately be presented to CSCE for endorsement.

Soviet officials contended strongly that the United States, the Federal Republic, France, and Great Britain must take broad Soviet security interests into account at Two-plus-Four. The Soviet Union will seek assurances that the new Germany will not acquire nuclear weapons. Economic and military considerations were of equal importance: with the disintegration of the Warsaw Pact, the growing integration of the European Community, and NATO intending to maintain its security role, the Soviet Union is concerned about "stability, the preservation of balance," in the words of one official. A united Germany as a full member of NATO would provide the West with great advantage. "It is not only territory, it is military and political potential—transportation, airports, harbors, logistical, economic, strategic power" provided by Germany that are at issue. The Soviet Union can not allow the United States to "geographically shift the border of NATO towards the Soviet Union."

The Soviets present their proposals for Two-plus-Four as an integrated package. Economic aspects of a Two-plus-Four settlement are, in their view, as important as resolution of military matters, as all bear importantly on security. The Soviets have depended upon the GDR as a major supplier of electronic equipment, including computers and optical devices important to development of sophisticated weaponry. In addition, they have purchased from the GDR naval combatants and auxiliary ships, as well as machine tools critical to military and civilian industries alike.[33] Soviet officials said that they would seek a "legal arrangement" at Two-plus-Four to assure the continued delivery of goods from the GDR for which they have contracts. Soviet officials stress that high technologies are crucial to the modernization of their economy. One Soviet official stated that the continued flow of high technology is necessary for economic stability in the U.S.S.R. "and very crucial for social stability." Consumer goods must be produced; otherwise, "we could not exclude major social disruption, even conflict, in the Soviet Union * * * No one in the West sees it in its interests to see further instability in the Soviet Union."

This official argued vigorously that the United States must agree to change the COCOM list, even if some items removed from the list are considered sensitive to U.S. security. He stated that this

---

[33] U.S. Congress. Joint Economic Committee. The Non-Soviet Warsaw Pact defense industries: an overview, by Shelley Deutch, in Pressures for reform in the East European economies. U.S. Congress. 101st Cong. 1st sess. Prepared by the Congressional Research Service. Washington: October, 1989. p. 177-182.

was a critical moment in U.S.-Soviet relations, and the United States must make crucial decisions. "We must have the [economic] means to move to a more democratic world, or we will remain forever enemies."

Borders.—The Soviet Union will seek at Two-plus-Four an agreement on European borders that it wishes to see presented to a CSCE summit in November 1990. Soviet representatives will pursue language for a document that is stronger than that of the language of the Helsinki Final Act and pledges more than the "inviolability of existing borders." Soviet officials would not take a position on whether such a document should be a treaty, or a lesser legal document. They did state that they believe that Germany and Poland, as well as other countries, should seek bilateral agreements that would provide greater security to existing borders.

Reparations and claims.—Soviet officials indicated that Moscow may wish to discuss further the reparations issue at Two-plus-Four. One official made a general comparison to Moscow's current effort to reach an agreement with Lithuania, which is seeking secession. He paraphrased Soviet spokesman Gennadi Gerasimov, who said, with regard to Lithuania, "This is a divorce case. If one side takes everything, the right way to make a divorce is through an accord."

The Soviets will also likely raise the issue of restitution. Many Ukrainians and other Soviet citizens were taken to forced labor camps during the War and have not been compensated. Soviet officials believe that German officials are willing to discuss this issue.

A peace settlement.—The Soviet Union wishes to have a legally binding document as a result of the Two-plus-Four talks in order to clear away remnants of the postwar period and to provide a basis for future security relations. One official described Germany as an economic and political "engine" with momentum in its favor. In these circumstances, he said, "the rights of the four powers can not be eternal," but there must be a document that guarantees a smooth transition to a new era. Soviet officials would not discuss the full breadth of issues to be covered by such a document and left the impression that such a question was a matter for negotiation at the talks.

France

Since the early 1960's France has worked to improve relations with West Germany. French governments since that period have sought to strengthen political, economic, and military cooperation with the Federal Republic, in part in the effort to lay to rest the national rivalries that contributed to repeated wars between the two countries, in part to strengthen European economic and political cooperation. Increasingly, France has valued European institutions such as NATO and the European Community in this process because they have anchored the Federal Republic firmly in the West. The FRG's great economic power has contributed, in the French view, to the general growth of the economy of EC states; and its large conventional forces have contributed to strategic stability in Central Europe.

France will pursue positions as Two-plus-Four intended to preserve good relations with Germany and to continue the anchoring of Germany to the West. The French government firmly backed

the unification of Germany in the fall of 1989 when the communist regime in the GDR began to collapse. French public opinion, at a rate of over 70 percent, has supported unification since that time. In the view of one French official, the younger generation in France has "turned the page" on decades of ill feeling towards Germany, and thinks more in terms of the political and economic integration of Europe than of national rivalries.

Security and arms control.—At Two-plus-Four France will support a united Germany's continued membership in NATO. Like the Federal Republic and the United States, Paris believes that NATO forces should not be stationed east of the Elbe after unification.[34]

The French government also believes that conventional force reductions, including those relating to the Two-plus-Four nations, must occur within the multilateral framework of CFE. France supports increased responsibility in the arms control and political fields for CSCE, and wishes to see CFE managed in this context.

Some French officials believe that Germany will soon seek the removal of all nuclear weapons from German soil, even if Two-plus-Four does not yield such a decision. No French nuclear forces are on FRG soil, but France has in the past supported a strong U.S. nuclear presence in Germany and in Europe. Several observers believe that France will ultimately cancel deployment, scheduled for 1992, of its new ground-based nuclear missile, the Hades, because its range does not extend beyond German territory.

Borders and a peace settlement.—Chancellor Kohl's failure in the late fall of 1989 and early months of 1990 to endorse unequivocally the permanent inviolability of the Polish-German border touched off a furor in the French press. French President Mitterrand has called upon the Federal Republic to pursue more concrete steps than the March 8, 1990, *Bundestag* resolution to assure the border's permanence.[35] French Foreign Minister Roland Dumas, before a Berlin audience on March 1, 1990, stated that "Issues as crucial as recognition of frontiers will of necessity be subject to contractual arrangements submitted for ratification. In short, whatever term is used to describe it, Europe needs a peace settlement." [36] Dumas did not address the issue of whether such a border agreement should be multilateral or bilateral, and therefore whether Two-plus-Four should create a document on borders ratified by all parties.

Berlin.—Most observers believe that the position of France and the United States are closely aligned on Berlin. The French wish to return the city to the control of the Federal Republic, but also wish to keep forces there, with German consent, until Soviet troop levels are sharply reduced in eastern Germany.

Reparations and claims.—Most observers believe that France will not seek to re-open the reparations issue with Germany because Germany has already paid heavy reparations to France, and because the issue would inflame public opinion in Germany. An agreement already exists between France and the Federal Republic

---

[34] Germany. Speech by Foreign Minister Roland Dumas in Berlin. March 1, 1990. Provided by the French Embassy in Washington. p. 3.

[35] Polish leaders get Mitterrand's support. FBIS-WEU. March 14, 1990. p. 17–18.

[36] Germany. Speech by Dumas. op. cit. p. 2–3.

for restitution for losses suffered by French nationals during the War.

Great Britain

The government of Prime Minister Margaret Thatcher will seek a Two-plus-Four agreement that terminates four power rights and responsibilities in Germany and in Berlin. Great Britain wishes to keep the Federal Republic anchored in NATO and the European Community. In late 1989 Thatcher had stated repeatedly that German unification should not occur until the end of the century. She has since altered her position and now supports rapid unification.

Security and arms control.—The position of the Thatcher government on Germany's security role as a result of Two-plus-Four is clear: Germany should remain in NATO's integrated military command, U.S. troops should stay on German soil, and U.S. nuclear weapons should remain on German territory. Thatcher has said that placement of nuclear weapons on German soil, however, is a matter for the Germans themselves to decide. She has said that Soviet forces may remain in eastern Germany "for a transitional period." Sharp reductions of Soviet forces, to be undertaken through the CFE process, should be answered by reductions of NATO forces. Thatcher has reiterated the decision of the May 1989 NATO summit: once conventional force reductions are under way, NATO should then consider negotiations to reduce, but not eliminate, SNF in Europe.[37]

Reparations.—Most observers agree that Great Britain will not pursue she issue of reparations at Two-plus-Four because the British government obtained large amounts of capital equipment from Germany in the several years after the war, and because it believes that the reparations should not be borne by the current generation of Germans.

Borders and a peace settlement.—Thatcher has strongly endorsed a border treaty "between the united Germany and Poland." When asked whether Great Britain would guarantee such a treaty, she responded: "I would be prepared to, but not alone. A guarantee that is also given by others would be better." [38]

British Foreign Minister Douglas Hurd has urged that Two-plus-Four produce a general agreement that would be endorsed by a CSCE summit in November 1990. A peace conference that might produce a treaty addressing the issues of the war is, in his view, not feasible due to the large number of participants that would be required. Instead, Two-plus-Four should yield a package of agreements, to be discussed at CSCE.[39]

Poland

Poland's principal objective at Two-plus-Four is to secure a settlement that brings greater stability to Central Europe, which in turn may foster economic development and the furthering of the demo-

---

[37] Germany and Europe—undivided. Speech by Prime Minister Margaret Thatcher. March 30, 1990. New York: British Information Services, 1990. p. 2-5.

[38] Thatcher on German unity. FBIS wire copy. March 26, 1990. p. 2

[39] Hurd urges West not to complicate arms talks. Financial Times. April 5, 1990. p. 2.

cratic processes in the region. Anti-German sentiment remains high in Poland due to the severe loss of life suffered there during the War, and to the continuing controversy over the Polish-German border. A sizable German ethnic minority remains in the territory east of the Oder-Neisse given provisionally to Poland at Potsdam.[40]

Borders.—The Polish government expressed approval of the March 8, 1990, *Bundestag* resolution endorsing the permanent inviolability of the Oder-Neisse line. Prime Minister Tadeusz Mazowiecki stated that he would like to see the GDR parliament elected on March 18, 1990, endorse the same resolution, followed by an initialing by Poland and the two German governments of a treaty with the resolution's content, then final signature by an all-German government and ratification of that treaty by an all-German parliament and the Polish *Sejm*. On April 12, 1990, the new GDR parliament adopted a resolution identical to that of the Bundestag. At Two-plus-Four, Poland will reportedly pursue a border settlement that moves beyond the Helsinki Final Act, which permits territorial adjustments through peaceful means. Poland will seek a treaty that instead pledges commitment to a permanent border, but will probably not seek a multilateral guarantee. Some observers believe that Poland's best interests may be served by calming the waters between Warsaw and Bonn, and seeking improved economic and political links. To this end, a lower level of rhetoric has been noticeable in FRG-Polish relations since mid-March 1990.

Reparations and claims.—At Potsdam, Poland was given the right to take reparations in capital equipment from the territory provisionally given to it east of the Oder-Neisse, and from the Soviet-occupied zone (now the GDR). There is no reliable estimate of the value of these reparations. On August 23, 1953, Poland renounced all further reparations claims from the GDR. Some observers believe that the 1953 agreement legally terminates any Polish claim to reparations. Prime Minister Mazowiecki has indicated that Poland will not pursue reparations at Two-plus-Four."[41]

At the same time, thousands of Poles suffered in German concentration and forced labor camps during the War, and Mazowiecki has stated that Poland will raise the issue of compensation for these individuals and their survivors at Two-plus-Four.[42]

Security matters.—The Polish government has told the Soviet government that it wishes to see Soviet forces leave its territory, but that the Polish-German border question should first be resolved. Soviet troops in Poland number from 40,000-58,000, depending on sources, and their principal mission is to supply logistical support and communications for Soviet forces in the GDR. The Polish government has stated that a united Germany should remain in NATO as a means to provide stability in Central Europe.[43]

---

[40] The Federal Republic and Poland disagree over the actual number. Kohl has said that 500,000-700,000 ethnic Germans live in the region; Mazowiecki has given the figure as approximately 100,000.

[41] Un entretien avec le premier ministre polonais. Le Monde. Feb. 9, 1990. p. 1.

[42] Ibid.

[43] Warsaw alliance split on Germany. New York Times. March 18, 1990. p. A1; and Pole says Soviet army should stay. Washington Post. Feb. 22, 1990. p. A1.

Poland has secured from the FRG a commitment for sizable credits. The Polish government reportedly wishes greater economic assistance from other Western countries, not only to modernize its economy but to blunt potential German influence on Polish policy-making. The Polish government believes that such assistance is an integral part of the effort to assure the nation's security.

Source: Foreign Relations of the United States. The Conference of Berlin, Vol I, p. 1152.

Source: Congressional Research Service.

Source: Congressional Research Service.